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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW RAY BRADFORD,

Defendant and Appellant.

D053950

(Super. Ct. No. SCD179540)

APPEAL from a judgment of the Superior Court of San Diego County, Roger W. Krauel, Judge. Affirmed.

Following the reversal of his conviction for second degree murder (see *People v. Bradford* (2007) 154 Cal.App.4th 1390), Matthew Ray Bradford entered negotiated guilty pleas to voluntary manslaughter (Pen. Code,¹ § 192, subd. (a)) and assault with a semi-automatic firearm (§ 245, subd. (b)).

¹ Statutory references are to the Penal Code.

The trial court sentenced Bradford in accordance with the plea bargain: 11 years on the manslaughter count; 10 years for the personal use of a firearm; five years for the infliction of great bodily injury; two years on the assault count; and three years four months for the personal use of a firearm in connection with the assault count.

Bradford's request for a certificate of probable cause was denied.

FACTS

The following facts are taken from *People v. Bradford, supra*, 154 Cal.App.4th at pages 1396 to 1398:

On October 31, 2003, Bradford attended a party at the invitation of the hostess's boyfriend, Jorge Prado. A few months earlier, Bradford had been involved in a fistfight with one of the hostess's brothers.

At one point during the party, Bradford, Pedro Lopez, who was another of the hostess's brothers, and a third person were involved in a heated argument. Bradford was punched in the face and fell to the ground. When Bradford got up, he pulled a black semi-automatic handgun from his waistband and fired at Pedro Lopez and the other man. Pedro Lopez was struck by a .40 caliber bullet and died 11 days later. Police found three shell casings at the scene.

Prado, who had started running to a gate that led to the street as soon as Bradford started shooting, was struck by one of the bullets. As Bradford fled the scene, he caught up with Prado, helped his injured friend move and apologized for having shot him. Prado was taken to the hospital where he was treated overnight and released.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether the appeal waiver contained in Bradford's plea agreement is applicable; (2) whether there is a sufficient factual basis for the plea; (3) whether the trial court erred by denying Bradford's motion to dismiss the second amended information on the grounds of former jeopardy and/or judicial misconduct; (4) whether Bradford received effective assistance of counsel with respect to the plea bargain; (5) whether a certificate of probable cause is necessary to attack the guilty pleas; and (6) whether the enhancement for infliction of personal injury in connection with the manslaughter count, which is normally an unauthorized sentence, is enforceable as part of a stipulated sentence.

We granted Bradford permission to file a brief on his own behalf. He has responded.

Bradford questions how the plea bargain "came about" and contends our earlier order denying his request that he be supplied with his trial counsel's files denied him adequate appellate review and the opportunity to show his acquiescence to the plea bargain was not a voluntary and intelligent choice. This essentially is a challenge to the validity of his guilty plea, and a defendant cannot make such a challenge on appeal unless

he has obtained a certificate of probable cause. (§ 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1095; see also *People v. Panizzon* (1996) 13 Cal.4th 68, 76.)

Bradford claims his sentence was excessive. However, Bradford stipulated to this sentence as part of his plea bargain. A defendant who pleads guilty in exchange for a specific sentence and receives the benefit of the bargain is estopped from later complaining about the sentence he received as a result of the plea agreement. (*People v. Hester* (2000) 22 Cal.4th 290, 295.)

"Where the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction. The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process." (*People v. Hester, supra*, 22 Cal.4th at p. 295.)

Bradford also contends it was improper for the prosecution to add the assault count, which was not charged in his first trial. Section 1009 authorizes amendment of an information at any stage of the proceedings provided the amendment does not change the offense charged in the original information to one not shown by the evidence taken at the preliminary examination. The question of whether the prosecution should be permitted to amend the information rests within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent a clear abuse of discretion. (*People v. George* (1980) 109 Cal.App.3d 814, 819.) The additional offense of assault with a semi-automatic firearm was supported by the evidence adduced at the trial, and Bradford does not contend otherwise. There was no notice issue involved and no showing of bad faith

by the prosecution. The trial court did not abuse its discretion by admitting the amendment to the second amended information.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, and *Anders v. California, supra*, 386 U.S. 738, including the possible issues raised by appellate counsel and Bradford, has disclosed no reasonably arguable appellate issue. Bradford has been adequately represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

HALLER, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.